

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.7
(ID # 10916)

MEETING DATE:
Tuesday, September 24, 2019

FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Response to the 2018-2019 Grand Jury Report: Community Facilities District Bond Funding in Riverside County Perpetual Debt Under CFD and Service Area Taxes, All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve, with or without modification, the attached response to the 2018-2019 Grand Jury Report: Community Facilities District Bond Funding in Riverside County Perpetual Debt Under CFD and Service Area Taxes; and
2. Direct the Clerk of the Board to immediately forward the Board's finalized responses to the Grand Jury, the Presiding Judge and to the County Clerk-Recorder (for mandatory filing with the state).

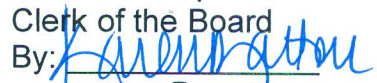
ACTION: Consent


Stephanie Perez, Principal Management Analyst 9/12/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Hewitt, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: September 24, 2019
xc: EO, Grand Jury, Presiding Judge, ACR

Kecia R. Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	N/A

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Penal Code Section 933(c) requires Board of Supervisors comment on the Grand Jury's recommendations pertaining to matters under the Board's control. In addition, responses must be provided to the Presiding Judge of the Superior Court within 90 days of receipt of the report.

ATTACHMENTS:

Response to Grand Jury Report


 Don R. Kent, Assistant CEO-County Finance Officer 9/12/2019


 Gregory V. Priamos, Director County Counsel 9/12/2019

RESPONSE TO 2018-2019 CIVIL GRAND JURY REPORT

Community Facilities District Bond Funding in Riverside County Perpetual Debt Under CFD and Service Area Taxes

Following are responses of the County of Riverside Executive Office to the above referenced Grand Jury Report.

FINDING NO. 1:

Disclosures

The Mello-Roos law requires that home buyers be advised at the time of purchase of these bond instruments. Preliminary investigation showed that some disclosures are highly deficient or lacking altogether. Many homeowners are unaware they have bonds on their homes. The disclosure documents reviewed by the RCCGJ contain, with few exceptions, ambiguous, complex or misleading language. When the disclosures of CFD bonds are made, they are often hidden in fine print and are undecipherable by the average home buyers. This practice shows transparency is not the goal of most seller's agents.

One developer has produced a model disclosure document. This document is clear, unambiguous and spells out the effect of CFD bonds in layman's terms. It specifies how the escalation of tax payments may become unsustainable and can or may cause one to lose their home to foreclosure. It also advises the home purchaser that, under law, an expedited foreclosure is allowed when the CFD taxes are not paid. Unpaid Ad Valorem tax foreclosures can take years, while unpaid CFD taxes can trigger foreclosure in 90 days.

Unannounced visits by the RCCGJ to sales offices revealed either a lack of knowledge or outright false and misleading information about CFDs being given by the sales staff to prospective buyers. When asked if there were CFDs on homes being sold the reply was "no, we don't have any of those." When the finance director was asked the same question, the reply was "I don't know what those are". This same experience was repeated at several sales offices.

Response to Finding 1: Respondent, County of Riverside Executive Office partially agrees with the finding.

The County of Riverside Executive Office is partially in agreement with the finding, however, there is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 1

Disclosures

Prospective buyers should be advised very early in the process about the bonds and their implications in layman's terms. Local taxing agencies should assure that the disclosure language is understandable and candid. An easily readable sign, written in at least ½ inch letters, posted at eye level, should state whether a tract infrastructure is financed by CFD or fees paid by a developer to provide a more informed choice.

Response to Recommendation NO. 1:

The County of Riverside Executive Office had already implemented this recommendation prior to the report's issuance.

The Mello-Roos Community Facilities Act contains specific requirements of disclosure to prospective purchasers, including, but not limited to Sections 53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2 and 53341.5 of the Government Code and is stated in the County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.D., Disclosure to Prospective Property Purchasers in Traditional CFDs.

Also stated in the County's Land Secured Operations Manual, Notice to Future Property Owners, 1. Community Facilities Districts, (b) "In addition to the disclosure requirements of the Act, the County requires that the seller of any tract of homes in a CFD formed by the County of Riverside prominently post in any sales office offering such a home a notice from the County of Riverside, declaring that the property is in a CFD (Mello-Roos District), stating the nature of the improvements financed by the CFD, stating the range and duration of the annual special tax expected to be levied, and providing a phone number for additional information."

FINDING NO. 2:

A False Economic Cost

CFD's provide the home buyer initially, with what appears to be, a lower priced home. As a result, this allows them to qualify for a home loan for which they might not otherwise qualify. The buyer may not become aware of the greater long term cost associated with their purchase until much later. The lender often fails to calculate the long term escalation of costs related to the special tax on the home and the long term consequence to the home buyer which could ultimately result in loss of their home.

The CFD or Mello-Roos was the building industry's answer to controlling their costs and providing funding for development projects. Removing the infrastructure costs allow developers to sell homes for less. In reality, it merely lowers the immediate cost by not incorporating the long term cost of CFD bonds for the home owner that are higher than a home financed by conventional terms.

As a result, this dependence on Mello-Roos (CFD) financing shifts development costs to the home buyer instead of the developer.

Response to Finding 2: Respondent, County of Riverside Executive Office partially agrees with the finding.

The County of Riverside Executive Office is partially in agreement with the finding, however, there is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 2

A False Economic Cost

A growing controversy in the area of CFDs is that developer fees are being replaced by CFD bond funding on homes. Buyers should have a choice of a purchase price with the CFD and Service area tax "OR" the adjusted price with infrastructure costs. This gives them relief from a perpetual tax and benefits them with a lower tax bill. This would allow the potential purchaser to accurately compare the total cost between developer fee and CFD funded homes. Otherwise, there is no way to fairly evaluate costs between different developments. Sales personnel should be fully educated on what this notification means and be able to completely explain this information to potential buyers.

Response to Recommendation NO. 2:

The County of Riverside Executive Office will not be implementing this recommendation because it is not warranted. California law imposes directly on sellers the requirement to disclose the presence of special tax liens to prospective purchasers. The Mello-Roos Community Facilities Act contains specific requirements of disclosure to prospective purchasers, including, but not limited to Sections 53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2 and 53341.5 of the Government Code and is stated in the County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.D., Disclosure to Prospective Property Purchasers in Traditional CFDs.

Also, stated in the County's Land Secured Operations Manual, Notice to Future Property Owners, 1. Community Facilities Districts, (b) "In addition to the disclosure requirements of the Act, the County requires that the seller of any tract of homes in a CFD formed by the County of Riverside prominently post in any sales office offering such a home a notice from the County of Riverside, declaring that the property is in a CFD (Mello-Roos District), stating the nature of the improvements financed by the CFD, stating the range and duration of the annual special tax expected to be levied, and providing a phone number for additional information."

FINDING NO. 3:

Timing of Disclosure and Honesty

On site investigations and interviews by RCCGJ of prospective home buyers were told when they asked about taxes; "Oh just the usual". Some were lied to when they asked if a Mello-Roos tax was on the home. One sales person told a potential buyer, "There are no CFD bonds on these homes." There were actually three CFD's on each home. This is either ignorance or dishonesty. The sales person was parsing the truth by saying "no" because they are technically called CFD Bonds and not Mello-Roos. The buyer believes that the Mello-Roos, which has a negative connotation, is not part of their purchase until escrow papers are presented for signature. Only later, at document signing or tax time, does the buyer discover the CFD surprise.

It is common practice for a buyer to be told, at the last minute, about the CFD Bonds, if the bonds were disclosed at all. They may have a buyer for their own home and are nearly ready to move into the new home. This situation deprives the home buyer of an opportunity to make an unpressured and informed decision.

Developers and city officials put forth the argument that it is the responsibility of the home buyer to do their due diligence and understand what they are obligating themselves to. Lengthy documents with obtuse language make it difficult for the average purchaser to comprehend their obligation until the tax bill arrives. Even knowledgeable buyers complained it was written in such a legalistic way that it was undecipherable. This is especially true when it is presented in a de-facto way with no explanation.

Response to Finding 3: Respondent, County of Riverside Executive Office partially agrees with the finding.

The County of Riverside Executive Office is partially in agreement with the finding, however, there is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 3

Timing of Disclosure and Honesty

The existence of CFDs on a property should be explained early in the purchase process, not at a point which makes a negative decision costly or overly burdensome. This has been a common theme of homeowners who were questioned. They had no idea of the tax burden that they were taking on or that it could last beyond the maturity and payoff of the bond, in other words a perpetual tax. Full disclosure should be made by the seller's agent before any document is signed or it is not informed disclosure or consent.

Response to Recommendation NO. 3:

The County of Riverside Executive Office had implemented this recommendation prior to the issuance of the report. California law imposes directly on sellers the requirement to disclose the presence of special tax liens to prospective purchasers. The Mello-Roos Community Facilities Act contains specific requirements of disclosure to prospective purchasers, including, but not limited to Sections 53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2 and 53341.5 of the Government Code and is stated in the County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.D., Disclosure to Prospective Property Purchasers in Traditional CFDs.

Also, stated in the County's Land Secured Operations Manual, Notice to Future Property Owners, 1. Community Facilities Districts, (b) "In addition to the disclosure requirements of the Act, the County requires that the seller of any tract of homes in a CFD formed by the County of Riverside prominently post in any sales office offering such a home a notice from the County of Riverside, declaring that the property is in a CFD (Mello-Roos District), stating the nature of the improvements financed by the CFD, stating the range and duration of the annual special tax expected to be levied, and providing a phone number for additional information."

FINDING NO. 4:

Escalators

CFD bonds have escalators limited by law to two percent per year per Bond. The Ad Valorem tax has a one percent escalator under Proposition 13. Unfortunately CFDs have erased all of the intended protection on taxation limits of Proposition 13. Many homes are encumbered with multiple CFD Bonds such as: a Facilities bond, a Service bond and a School bond. These three bonds and the Ad Valorem tax amount to a seven percent escalation of all taxes. That increase compounds annually and means that within six years tax, debt has increased to perhaps more than 50% of the original amount. Financial distress could develop that would affect those on a fixed income especially when an economic downturn occurs. This scenario does not take into account other taxes such as voter approved school bonds, sales tax increases and hospital bonds. Many other taxing agencies can further add to the tax bill.

The bonds often contain a clause that says "After the Bond is paid in full (40 or more years) an amount commensurate with the continuation of facilities and services which need to be rendered may be assessed." In other words the Bond generated tax payments may continue forever. This is another issue where most buyers are not given adequate warning. Escalators are a mechanism used by cities and developers to obtain the greatest amount of revenue from the bond payers. Escalators are not required on the bonds by law, but are allowed. The special tax may be permanent and is within the discretion of the city council to make this tax perpetual under certain formation rules.

Response to Finding 4: Respondent, County of Riverside Executive Office disagrees with the finding.

There is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

Furthermore, "The Ad Valorem tax has a one percent escalator under Proposition 13" as stated above in the finding, is false. The California Constitution, Article XIII A – Tax Limitation SEC. 2. (b) states "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

In addition, the claim that "These three bonds (a Facilities bond, a Service bond and a School bond, as cited above) and the Ad Valorem tax amount to a seven percent escalation of all taxes. That increase compounds annually and means that within six years tax, debt has increased to perhaps more than 50% of the original amount" is also false.

The County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.E.2., Total Tax Burden states "The total tax burden (that is, the anticipated maximum annual Traditional CFD special tax, together with ad valorem property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees and charges payable from and secured by the property) on any residential owner-occupied parcel in a Traditional CFD shall not exceed 2% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

RECOMMENDATION NO. 4

Escalators

The home buyer should be advised that the special tax payments may be imposed after the bonds are paid off. Buyers should be advised of the outward forecast of the escalators and their impact in five, ten and twenty years. Buyers should be offered the option of buying the home at a price comparable with the same dwelling without CFD Bonds and the escalators.

Response to Recommendation NO. 4:

The County of Riverside Executive Office will not be implementing this recommendation because it is not warranted. California law imposes directly on sellers the requirement to disclose the presence of special tax liens to prospective purchasers. The Mello-Roos Community Facilities Act contains specific requirements of disclosure to prospective purchasers, including, but not limited to Sections 53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2 and 53341.5 of the Government Code and is stated in the County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.D., Disclosure to Prospective Property Purchasers in Traditional CFDs.

Also, stated in the County's Land Secured Operations Manual, Notice to Future Property Owners, 1. Community Facilities Districts, (b) "In addition to the disclosure requirements of the Act, the County requires that the seller of any tract of homes in a CFD formed by the County of Riverside prominently post in any sales office offering such a home a notice from the County of Riverside, declaring that the property is in a CFD (Mello-Roos District), stating the nature of the improvements financed by the CFD, stating the range and duration of the annual special tax expected to be levied, and providing a phone number for additional information."

FINDING NO. 5:

Long Term Development Contract

Another practice by tax approving agencies is guaranteeing developers, through a master agreement, hundreds of millions of dollars in pre-approved bonds. This is accomplished without any thought of what the economy will be at the time of issuance. The home buyer's ability to pay is not part of the equation in the decision making. This creates a process even more precarious and uncertain.

Long term master development agreements extending into double digits have no real limit guaranteeing developers the city's support for CFD entitlements and are irresponsible. This allows uncontrolled development for which a city may not be able to pay.

A recent national public radio program detailed the difficulties of a local Inland Empire city struggling with just such a situation.

It was predicted by the city council that their water and sewage bills will have to increase 100% in order to keep up with the development needs. Those costs will fall on residents in the community.

A local city council, when confronted by its citizens about the extreme indebtedness and uncontrolled development, defended its unchecked practice of approving bonds by stating in numerous meetings; "they could not refuse to vote on the purchase of bonds due to a long term development contract". When RCCGJ requested a copy of the document, their legal representative stated that "such a document does not exist". This public comment presents a serious conflict of interest, deceit and fraud upon it's citizens. It could be seen as a conspiracy to mislead the people. Those voting on the CFDs; and in one case those supporting a lawsuit settlement favoring the developer, have received large campaign donations from the very developers whose bond sales they continue to approve.

Response to Finding 5: Respondent, County of Riverside Executive Office disagrees with the finding.

There is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

The County of Riverside has entered into very few long-term development agreements, for residential development projects under the authority in Government Code section 65864 et seq. – one in the last 15-20 years that staff is aware of. It is not a standard practice to enter into Development Agreements for residential projects, and would only be considered in the case of very large master-planned communities that may take decades to build-out. Further, the County's standard form language for Development Agreements does not commit the County to enter into CFDs for infrastructure bonding. Creating a future CFD is a separate discretionary action to be taken by the County at such future time as a CFD is formed, not when a development agreement is approved and is also subject to a vote of the property owners that own the property at that future time before the County can approve the issuance of a CFD bond.

RECOMMENDATION NO. 5

Long Term Development Contract

Long term development agreements should not be part of city or county planning. Clauses should be included to allow exit, based on economic conditions or a vote of the taxing agency to terminate such an agreement.

Response to Recommendation NO. 5:

The County of Riverside will not be implementing this recommendation because it is not warranted. Government Code section 65864 et seq. expressly authorize cities and counties to enter into development agreements with any person having a legal or equitable interest in real property being proposed for development. Consistent with state law, the County has adopted procedures and requirements for consideration of development agreements and the County complies with state law when negotiating and entering into such development agreements. The County will not implement this recommendation because it would limit the land use discretion afforded to the County under state law.

FINDING NO. 6:

Uncontrolled Development

The uncontrolled development made possible by CFD bonds has Riverside County responsible for almost 25% of the total bond debt in all of California. In the words of former Governor Swartzenegger, "These bonds are being used irresponsibly and must be controlled by the legislature to protect unwary citizens". Bonds are initiated by the owner of the land parcel. If there is one land owner, a single vote can encumber tax debt on thousands of people in perpetuity.

Response to Finding 6: Respondent, County of Riverside Executive Office disagrees with the finding.

As stated above in the report, "The uncontrolled development made possible by CFD bonds has Riverside County responsible for almost 25% of the total bond debt in all of California" is false.

The outstanding par amounts as of September 2, 2019 specific to CFD's issued by the County of Riverside, are \$84.74 million. If the County as an issuer were to amount "for almost 25% of the total bond debt in all of California" that would easily equate to tens of billions of dollars which simply is not the case.

RECOMMENDATION NO. 6:

Uncontrolled Development

Communities should carefully consider development approval and take into consideration the wishes of their residents. Just because CFD financing is available does not mean it should be used to excess. The heavy loads of debt encumbered by bonds and Service areas puts the community and its residents at risk of overburdening tax loads. Serious consideration must be given to the ability to meet additional infrastructure costs in the long term before approving new CFD's. These additional costs should not be charged by any means to prior residents of the community. Any new costs should be borne by those who generate the need.

Response to Recommendation NO. 6:

The County of Riverside Executive Office will not be implementing this recommendation because it is not warranted. The County is cognizant of total tax burden and has addressed it in two areas of County policy, Traditional Community Facilities Districts as well as Service and Maintenance Community Facilities Districts. Language for Traditional CFDs is found in the County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.E.2., Total Tax Burden. The total tax burden (that is, the anticipated maximum annual Traditional CFD special tax, together with ad valorem property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees and charges payable from and secured by the property) on any residential owner-occupied parcel in a Traditional CFD shall not exceed 2% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

In addition, language addressing total tax burden related to Service and Maintenance Community Facilities Districts is stated in Section IV.D.2. Total Tax Burden. The total tax burden (that is, the anticipated maximum annual Service and Maintenance CFD special tax, together with ad valorem property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees and charges payable from and secured by the property) on any residential owner-occupied parcel in a Service and Maintenance CFD shall not exceed 2% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto as established at the time of approval of the Service and Maintenance CFD.

FINDING NO. 7:

Bond Fund Security

As widely reported, the City of Beaumont had concerns about the fate of \$45,000,000 to \$97,000,000, but the exact amount is unknown due to poor accounting of tax payer's bond money. Seven top city officials were arrested and received, what some believe, was only a slap on the wrist for their manipulation of bond money. They were required to pay a total of \$8,000,000 dollars in restitution, as well as minimal home confinement. These light sentences send a message that misuse of bond monies on the part of individuals is not sufficient to warrant a tougher penalty. This message increases the lack of safety of public bond funds. Strangely, the City of Beaumont says that no money was lost from bond proceeds.

This does not correspond to the court ordered restitution of the seven defendants.

The City of Beaumont has filed suit to recover additional money from the defendants. When the city's legal representative was asked by the RCCGJ, "If money is recovered, would it be put back into the bonds from which it was misused?"

They answered evasively "No money was stolen or is missing from the bonds!" Many Beaumont residents, due to the reported manipulation of bond monies, may not receive the services or infrastructure they have a right to expect, but will still have to pay off their bonds.

Response to Finding 7: Respondent, County of Riverside Executive Office partially agrees with the finding.

While concerns of the City of Beaumont are especially troubling, as stated above, there is no mention of a specific concern with County of Riverside issued CFDs. The County has no jurisdiction over the City and therefore is not responsible for the actions of its former officials.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 7:

Bond Fund Security

A citizen's oversight committee should regularly investigate how bond money is being spent. Their charge should be to make sure that bond funds are directed for their intended legal purposes. A public report should be made quarterly and any diversions from the intent of the Mello-Roos Act should be reported to the State Controller or appropriate authority.

Any deviations from the required legal reporting to the Security and Exchange Commission must be noted and rectified in a timely manner. Special attention should be given to Service area funds. Oversight committees that include police and fire representation are critical to assure funding is appropriate in order to maintain staffing levels and competitive salaries for protection of the public. It is also recommended that compliance with the law be regularly verified and examined by the Riverside County Auditor.

Response to Recommendation NO. 7:

The County of Riverside Executive Office will not be implementing this recommendation because it is not warranted as there is no mention of a specific concern with County of Riverside issued CFDs.

When CFD bonds are issued, the local agency is required to make certain covenants with bondholders, including, but not limited to, to use the bond proceeds for the authorized purposes and to make periodic reports to the bond market regarding the bond issue.

In addition, the local agency must select a fiscal agent or trustee, which is normally a bank trust department, to administer the bonds, keep the records of the bonds' registered owners, receive bond payments from the local agency, and forward those payments to the registered owners of the bonds. Further, a trustee will hold many of the funds and accounts created for the bond issuance and described in the bond legal documents, including the construction fund and the reserve fund.

The fiscal agent/trustee protects the rights of the bondholders against others, including the local agency.

CFD bonds are subject to continuing disclosure requirements as described in the Official Statement prepared in connection with the issuance of the bonds. The Official Statement is the document that provides all facts material to the evaluation of the bonds by potential investors. Rule 15c2-12 of the Securities and Exchange Commission requires that the underwriter for the bonds, prior to purchasing the bonds, obtain a written undertaking from the local agency, or from an "obligated person," that certain continuing disclosure with respect to the bond issue will be made to all National Recognized Municipal Securities Information Repositories, with such posted on EMMA (Electronic Municipal Market Access - a service of the Municipal Securities Rulemaking Board), which protects investors, state and local governments, and the public interest. Such disclosure includes annual financial information and disclosure of material events with respect to the bonds such as failure to make payments on the bonds, draws on the reserve fund, significant sales of property, and failure of an obligated person to make continuing disclosure according to its agreement.

In addition, the local agency must provide annual reporting to the California Debt and Investment Advisory Commission of basic information about the bond issue such as the outstanding principal amount; balance in the reserve fund; balance in the construction fund; balance in the capitalized interest fund (if any); the level of special tax delinquencies and progress of foreclosure action against delinquent parcels; and the assessed value of all parcels subject to the special tax. Furthermore, the local agency must report to CDIAC within 10 days of occurrence any shortfall in the payment of either principal or interest on the bonds; or the reserve fund is drawn down to make payments on the bonds.

FINDING NO. 8:

Need and Use Plan Required

Any city or school district, before getting approval of CFD Bonds, must present a specific plan for the need and use of the money and educate the constituency of the community. The current public hearings provide only general information and not specifics. This does not give the public enough information to make relevant and informed comment. The fact that in new developments those who will be ultimately responsible for those tax payments are as yet unknown and is problematic. This planning should be done before any election to buy bonds is held by the land owner (developer).

The California State Education Code requires each district to have an accountability plan to ensure the safety of funds under their control. A school district within Riverside County

has recently announced its intent to put CFD Bonds on new homes to build a school. When the RCCGJ requested a copy of the accountability plan for the district, we were told, they do not have one. When asked if they had one for use of the bond money the answer was the same.

This is in a city where the developer has always paid mitigation fees to construct a school for students in the area being impacted by increased development. The school district and city have plans to overlay the two existing CFD Bonds with a third for school construction.

This tactic has been used in other areas and raises serious questions of its constitutionality. The California Supreme Court decision in *Serrano v. Priest* held that unequal amounts of money spent on students in Beverly Hills and Baldwin Park constituted a violation of equal protection under the law. Even though this CFD financing of schools has taken place in some communities, it has not, to our knowledge, been litigated under the parameters of the *Serrano v. Priest* decision.

When the school district was asked, if they considered the change in school finance law changes that could affect the district, the respondent said "no, but if we knew of any please tell them." Cities and school districts are buying bonds, without planning or voters approval, because they can. They reach into taxpayers pockets without considering the consequences of their actions on the future.

Response to Finding 8: Respondent, County of Riverside Executive Office partially agrees with the finding.

The County of Riverside Executive Office is partially in agreement with the finding, however, there is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated by the report may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 8:

Need and Use Plan Required

An accountability plan for tracking and reporting must be developed. Any city or school district, before buying CFD Bonds, must present a specific plan for the need and use of the money and educate the community. Public hearings must provide specifics. This should give the public enough information to make relevant comment and voice their concerns. This should be done before a CFD Bond authorization election is held by the land owner.

This recommendation will in no way redefines or restricts any part of the current law. All are implementable within the current structure of the law. This will increase transparency for the public, discourage bad acts and prevent reoccurrence of catastrophic losses of bond funds in the future.

Response to Recommendation NO. 8:

The County of Riverside Executive Office will not be implementing this recommendation because it is not warranted as there is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated by the report may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

Regarding County issued-CFDs, the County does hold a public hearing in accordance with State law before a CFD is created for a County-issued bond. An election is also held in accordance with State law involving the affected property owners at the time that the CFD is created, and disclosure documents are required as specified in the previous responses when developers sell the homes covered by CFD's to the individual home purchasers.

FINDING NO. 9:

Diversion and Recovery of Funds

CFD financing appears to be a convenient way for local governments to pay for infrastructure and other needs. Bonds carry many additional responsibilities which requires city and county elected officials to pay close attention.

Response to Finding 9: Respondent, County of Riverside Executive Office agrees with the finding.

The Mello-Roos Community Facilities Act does allow for the funding of the construction or acquisition of real or tangible property with a useful life of five years or more, such as street improvements, water, sewer, storm drain improvements, parks, etc., and the financing of services to accommodate the growing needs of developing areas.

RECOMMENDATION NO. 9:

Diversion and Recovery of Funds

When cities pursue the loss of funds through litigation, all recovered funds should be restored, to assure the integrity of the bonds. The city or county agency must not be allowed to divert the funds into other areas. The city or county taxing agency must not be allowed to divert CFD Bond funds that are recovered through litigation to replace "losses".

Recovered money must be used to restore the integrity of the bond funds.

Response to Recommendation NO. 9:

The County of Riverside Executive Office had already implemented this recommendation prior to the issuance of the report.

When CFD bonds are issued, the local agency is required to make certain covenants with bondholders, including, but not limited to, to use the bond proceeds for the authorized purposes and to make periodic reports to the bond market regarding the bond issue. In addition, the local agency must select a fiscal agent or trustee, which is normally a bank trust department, to administer the bonds, keep the records of the bonds' registered owners, receive bond payments from the local agency, and forward those payments to the registered owners of the bonds. Further, a trustee will hold many of the funds and accounts created for the bond issuance and described in the bond legal documents, including the construction fund and the reserve fund. The fiscal agent/trustee protects the rights of the bondholders against others, including the local agency.

CFD bonds are subject to continuing disclosure requirements as described in the Official Statement prepared in connection with the issuance of the bonds. The Official Statement is the document that provides all facts material to the evaluation of the bonds by potential investors. Rule 15c2-12 of the Securities and Exchange Commission requires that the underwriter for the bonds, prior to purchasing the bonds, obtain a written undertaking from the local agency, or from an "obligated person," that certain continuing disclosure with respect to the bond issue will be made to all National Recognized Municipal Securities Information Repositories, with such posted on EMMA (Electronic Municipal Market Access - a service of the Municipal Securities Rulemaking Board), which protects investors, state and local governments, and the public interest. Such disclosure includes annual financial information and disclosure of material events with respect to the bonds such as failure to make payments on the bonds, draws on the reserve fund, significant sales of property, and failure of an obligated person to make continuing disclosure according to its agreement.

In addition, the local agency must provide annual reporting to the California Debt and Investment Advisory Commission of basic information about the bond issue such as the outstanding principal amount; balance in the reserve fund; balance in the construction fund; balance in the capitalized interest fund (if any); the level of special tax delinquencies and progress of foreclosure action against delinquent parcels; and the assessed value of all parcels subject to the special tax. Furthermore, the local agency must report to CDIAC within 10 days of occurrence any shortfall in the payment of either principal or interest on the bonds; or the reserve fund is drawn down to make payments on the bonds.

FINDING NO. 10:

The Debt Burden Growing with Little Limitation

Local Governments must be cognizant that many agencies within their sphere of influence

have the power to levy taxes. This can and has created prohibitive debt burdens on tax payers. This is especially true in the current practice of placing multiple CFD's on the same property. This overlapping taxation has become analogous to the environment which existed in 1978 which propelled the rebellion of taxpayers and the passage of Proposition 13.

A heavy debt burden can become a critical player in any economic downturn, affecting the local economy and the bond market. Municipalities may find themselves, as in 2008, in a position which limits their flexibility to provide future infrastructure and leads to home foreclosure.

Response to Finding 10: Respondent, County of Riverside Executive Office partially agrees with the finding.

The County of Riverside Executive Office is partially in agreement with the finding, however, there is no mention of a specific concern with County of Riverside issued CFDs.

The concerns stated may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

The County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.E.2., Total Tax Burden states "The total tax burden (that is, the anticipated maximum annual Traditional CFD special tax, together with ad valorem property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees and charges payable from and secured by the property) on any residential owner-occupied parcel in a Traditional CFD shall not exceed 2% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

RECOMMENDATION NO. 10:

The Debt Burden Growing with Little Limitation

Local government decision makers should be cautious of debt overload within their communities. CFD financing must be guided by long range planning and adherence to state law. Long term agreements with developers such as 25 year development agreements should be avoided. These agreements contain covenants which promise that the city or other taxing entities will pass CFDS for infrastructure for 25 years. There is no way to know, at the time of signing, that the future unknown economic conditions would permit the assumption of additional tax debt. Each project should be considered within current financial contexts. Growth induced infrastructure should be considered on a project-by-project basis. Each special taxing agency should impose a mandatory model for CFD financing for all city or county taxing agencies, in order to avoid tax saturation.

Response to Recommendation NO. 10:

The County of Riverside Executive Office had already implemented this recommendation prior to the issuance of the report.

The County of Riverside's Board of Supervisors Policy B-12, Land Secured Financing Districts, Section I.E.2., Total Tax Burden states "The total tax burden (that is, the anticipated maximum annual Traditional CFD special tax, together with ad valorem property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees and charges payable from and secured by the property) on any residential owner-occupied parcel in a Traditional CFD shall not exceed 2% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

The County of Riverside has entered into very few long-term development agreements, for residential development projects under the authority in Government Code section 65864 et seq. – one in the last 15-20 years that staff is aware of. It is not a standard practice to enter into Development Agreements for residential projects, and would only be considered in the case of very large master-planned communities that may take decades to build-out. Further, the County's standard form language for Development Agreements does not commit the County to enter into CFDs for infrastructure bonding. Creating a future CFD is a separate discretionary action to be taken by the County at such future time as a CFD is formed, not when a development agreement is approved and is also subject to a vote of the property owners that own the property at that future time before the County can approve the issuance of a CFD bond.

FINDING NO. 11:

CFD Zones, Specific Taxes and Benefits

Some enterprising individuals have been creative and developed CFDs which cover an entire city. Tax payers have no guarantee that they will specifically enjoy the benefits they are paying for from bond funds. This is the case in one city where until recently, the entire city was one CFD. Money from bonds was used to fund growth related projects, not related to the bond payer's area, which benefited developers and the city.

Response to Finding 11: Respondent, County of Riverside Executive Office disagrees with the finding.

While the reference to a city was cited, there is no mention above of a specific concern with County of Riverside issued CFDs.

The concerns stated by the report may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or

special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 11:

CFD Zones, Specific Taxes and Benefits

Taxing agencies should assure that CFDs and Service areas are specific in relation to the areas they serve. Those paying the bond and Service area taxes should be the ones benefiting from them. Home owners should not be paying for infrastructure that subsidizes the developer's profits.

Response to Recommendation NO. 11:

The County of Riverside Executive Office had already implemented this recommendation prior to the issuance of the report.

Under the Mello-Roos Act, the local jurisdiction's legislative body forms a CFD with boundaries to include property that will derive benefit from the improvements that are proposed to be financed and the services being funded. A special tax is levied annually and collected on the annual property tax bill for the parcels within the CFD.

FINDING NO. 12:

Financing within Limits

The Building Industry Association (BIA) is an organization representing the interest of developers and builders. In a case involving the City of San Ramon, California, they challenged a CFD special tax passed by the San Ramon City Council. This case included several important issues. A facet of the case concerned the right of the city to continue the special tax even if the citizens passed a referendum to remove it. Unfortunately, the case was lost on appeal. The important issue here is that the building industry took conscious efforts to keep the CFD financing within limits.

Response to Finding 12: Respondent, County of Riverside Executive Office disagrees with the finding.

While the reference to a city was cited, there is no mention above of a specific concern with County of Riverside issued CFDs.

The concerns stated by the report may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.

RECOMMENDATION NO. 12:

Financing within Limits

City Council should review the approval of CFDs in their community and also review campaign contributions. An over reliance of developer or sub- contractor money in the elective process could influence the judgment of elected officials away from the best interests of the community. The RIVCO CEO should give this immediate attention.

Response to Recommendation NO. 12:

The County of Riverside Executive Office will not be implementing this recommendation because it is not warranted or reasonable. While the reference to a city was cited, there is no mention above of a specific concern with County of Riverside issued CFDs.

The concerns stated by the report may lie within the geographical boundaries of the County of Riverside, however, the County does not have jurisdiction over city, school or special district issuance of CFD's, or, their administration. That responsibility lies with the specific jurisdictions and its elected officials.